



The State of New Hampshire  
**Department of Environmental Services**



Michael P. Nolin  
Commissioner

Inns & Motels of the Lakes Region, Inc.  
Attn: Willard Drew  
15 Kimball Road  
Gilford, NH 03249

Willard Drew  
15 Kimball Road  
Gilford, NH 03249

Re: The Grant Nightclub, f/k/a King's Grant Inn  
Gilford, New Hampshire  
EPA #0888210

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
NO. AF 04-007**

March 5, 2004

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Inns & Motels of the Lakes Region, Inc., pursuant to RSA 485:58 and NH Admin. Rule Env-C 601.05. The Division is proposing that fines totaling **\$4,900** be imposed against Inns & Motels of the Lakes Region, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Inns & Motels of the Lakes Region, Inc. ("Inns and Motels") is the record owner of The Grant Nightclub, f/k/a King's Grant Inn, having a mailing address of 15 Kimball Road, Gilford, NH 03249.
3. Willard Drew is an individual with a mailing address of 15 Kimball Road, Gilford, NH 03249. Willard Drew is the designated representative of Inns & Motels of the Lakes Region, Inc. for the purpose of water supply issues.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. RSA 485 authorizes the Department of Environmental Services ("DES") to regulate public water supplies. RSA 485:3 authorizes DES to adopt drinking water rules which identify contaminants that may have an adverse effect on health, which establish maximum contaminant levels ("MCLs") that are acceptable in water for human consumption, which establish criteria and procedures to assure compliance with such MCLs, and which identify criteria and standards to ensure the proper operation and maintenance of water systems. Pursuant to this authority, DES has adopted NH Admin. Rule Env-Ws 300 *et seq.*

2. RSA 485:58, IV authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per offense for violations of RSA 485 or any rule adopted pursuant thereto, and to establish a schedule of fines for such violations. Pursuant to this authority, the Commissioner has adopted Env-C 602 to establish the schedule of fines for violations of RSA 485 and rules adopted pursuant thereto.
3. Inns & Motels are the record owner of The Grant Nightclub, f/k/a King's Grant Inn, water system which serves a motel consisting of six units and a restaurant, which seats an estimated population of 150, located in the community of Gilford, New Hampshire ("Water System").
4. The NH Secretary of State's office reports that the Inns & Motels was involuntarily dissolved in 1993. In a phone conversation with DES staff on May 26, 1999, Mr. Drew confirmed the corporate dissolution and stated he owned the Water System. No recorded deed supports Mr. Drew's claim. Despite Mr. Drew's statement, the Town of Gilford Tax Assessor's records continue to list Inns & Motels as the owner of the Water System.
5. The Water System is a transient, non-community water system as defined in RSA 485:1-a, X and Env-Ws 302.02 (ca).

**A. BACTERIA MONITORING AND PUBLIC NOTICE OF MONITORING VIOLATIONS**

6. Env-Ws 315.01 requires transient, non-community water systems to monitor for bacteria in accordance with a schedule based on the population served by the system.
7. Env-Ws 325.05 requires transient, non-community water systems serving less than 1,000 people to submit a minimum of one sample during each calendar quarter that the system provides water to the public to test for the presence of total coliform bacteria.
8. Env-Ws 321.09 requires each public water system owner to monitor at the time designated by DES in accordance with the system's sampling schedule.
9. The Water System is assigned to collect routine bacteria samples in the months of March, June, September and December.
10. Prior to January 1, 2002, Env-Ws 351.01 required a water system that failed to submit any of the required bacteria samples to notify persons served by the system within 21 days of the monitoring violation. Within 30 days of the failure to sample, the water system was required to provide proof of public notice to DES.
11. As of January 1, 2002, Env-Ws 351.01 requires a water system that fails to submit any of the required bacteria samples to notify persons served by the system within 30 days of learning of the monitoring violation. Within 10 days of providing public notice to consumers, the water system is required to provide proof of public notice to DES.
12. The Water System failed to submit samples for bacterial analysis to a state-certified laboratory during the system's scheduled sampling months of March 1999 and March 2000.

13. The Water System provided proof of public notice for the March 1999 bacteria monitoring violation, but failed to submit proof of public notice for the March 2000 monitoring violation.

14. On or about August 23, 2000, Letter of Deficiency #00-79 ("LOD") was issued to the Water System. The LOD addressed the bacteria monitoring violations that occurred in March 1999 and March 2000 and the failure to provide proof of public notice for the March 2000 monitoring violation.

15. The LOD requested the Water System do the following:

- a. By September 10, 2000, and thereafter in the scheduled months of December, March, June, and September, submit samples for bacterial analysis to a state-certified laboratory; and
- b. By September 15, 2000, carry out the public notice requirements for the March 2000 major monitoring/reporting violation; and
- c. By September 22, 2000, provide proof of public notice to DES.

16. The LOD was received by the Water System on August 25, 2000, as evidenced by the signed postal receipt.

17. The Water System submitted the September 2000 total coliform sample and the proof of public notice for the March 2000 monitoring violation as requested by the LOD.

18. The September 2000 bacteria sample tested positive for total coliform bacteria.

19. Env-Ws 325.07 requires water systems to submit four repeat samples following a total coliform positive routine sample and to submit five routine bacteria samples the month following a total coliform positive routine sample.

20. The Water System failed to submit the required four repeat samples following the September 2000 total coliform positive routine sample and submitted only one of the five required routine samples in October 2000.

21. The Water System failed to submit a routine total coliform sample for December 2000 and March 2001 and failed to provide proof of public notice for these two monitoring violations.

22. On or about July 20, 2001, Administrative Order No. WD 01-23 ("the Order") was issued to the Water System. The Order addressed the major monitoring violations that occurred in March 1999, March 2000, December 2000 and March 2001, the failure to collect four repeat samples following the positive bacteria sample in September 2000, the failure to collect five routine total coliform samples in October 2000, and the failure to provide proof of public notice for the December 2000 and March 2001 monitoring violations. The Order required the Water System to:

- a. Within 15 days of the date of the Order, submit a total coliform sample to a laboratory certified to perform total coliform analysis. Within 10 days of completion, submit the total coliform results to DES.
- b. Within 15 days of the date of the Order, notify water consumers of the failure to sample for total coliform bacteria in October 2000, December 2000, and March 2001, and the failure to submit repeat samples in September 2000.
- c. Within 20 days of the date of the Order, submit proof of public notice required above to DES along with a cover letter indicating how, when, where, and by whom the public notice was given.
- d. Between September 4, 2001, and September 17, 2001, submit a routine sample for bacterial analysis to a state-certified laboratory for analysis.
- e. Between December 3, 2001, and December 14, 2001, submit a routine sample for bacterial analysis to a state-certified laboratory for analysis.

23. The Water System received the Order on July 25, 2001, as evidenced by the signed postal receipt.

24. Although the Water System did not meet all the deadlines contained in the Order, compliance with the Order was achieved. On January 31, 2002, DES issued a Notice of Compliance and Release of Recordation for the Order.

25. The Water System submitted the required March 2002 routine bacteria sample.

26. The Water System failed to submit the required June 2002 routine bacteria sample. As a result, a Notice of Violation ("NOV") was issued to the Water System on or about July 26, 2002. The NOV requested the Water System to submit a make-up bacteria sample and to submit proof of public notice to DES for the June 2002 monitoring violation. The Water System submitted the requested make-up bacteria sample, but did not submit proof of public notice until October 2, 2002.

27. The Water System submitted the required September 2002 routine bacteria sample.

28. The Water System failed to submit the required December 2002 routine bacteria sample. As a result, an NOV was issued to the Water System on or about January 24, 2003. The NOV requested the Water System to immediately submit a make-up bacteria sample and to submit proof of public notice to DES for the December 2002 monitoring violation. The Water System did not submit the make-up bacteria sample, nor did it submit proof of public notice.

29. The Water System failed to submit the required March 2003 routine bacteria sample. As a result, an NOV was issued to the Water System on or about April 24, 2003. The NOV requested the Water System to immediately submit a make-up bacteria sample and to submit proof of public notice to DES for the March 2003 monitoring violation. The Water System did not submit the make-up bacteria sample until July 22, 2003, nor did it submit proof of public notice until July 21, 2003.

30. The Water System failed to submit the required June 2003 routine bacteria sample. As a result, an NOV was issued to the Water System on or about July 23, 2003. The NOV requested the Water System to immediately submit a make-up bacteria sample and to submit proof of public notice to DES for the June 2003 monitoring violation. The Water System submitted the requested make-up bacteria sample and submitted proof of public notice within the 40 day required period.

31. The Water System failed to submit the required September 2003 routine bacteria sample. As a result, an NOV was issued to the Water System on or about October 23, 2003. The NOV requested the Water System to immediately submit a make-up bacteria sample and to submit proof of public notice to DES for the September 2003 monitoring violation. The Water System has not submitted the requested make-up bacteria sample, nor has it submitted proof of public notice.

#### **B. CHEMICAL MONITORING**

32. Env-Ws 326.30 requires transient, non-community water systems to monitor for nitrate annually.

33. Env-Ws 321.09 requires each public water system owner to monitor at the time designated by DES in accordance with the system's sampling schedule.

34. The Water System is assigned to monitor for nitrate in the second quarter (April, May, or June) of each year.

35. The Water System failed to monitor for nitrate in the second quarter of 2002, but did submit a nitrate make-up sample in July 2002, prior to DES issuing an NOV for the monitoring violation on or about August 6, 2002.

36. The Water System failed to monitor for nitrate in the second quarter of 2003. As a result, an NOV was issued to the Water System on or about August 1, 2003. The NOV requested the Water System to submit a make-up nitrate sample within 30 days of the receipt of the NOV. To date, DES has not received the results of a make-up 2003 nitrate sample.

#### **IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES**

1. The Inns & Motels has violated Env-Ws 325.05 by failing to submit a water sample for total coliform analysis in the system's scheduled sampling month of June 2002. This was the Inns & Motels of the Lakes Region's first bacteria monitoring violation in federal fiscal year 2002. For this violation, Env-C 602.03(a) specifies a fine of \$100.

2. The Inns & Motels has violated Env-Ws 325.05 by failing to submit a water sample for total coliform analysis in the system's scheduled sampling month of December 2002. This was the Inns & Motels of the Lakes Region's first bacteria monitoring violation in federal fiscal year 2003. For this violation, Env-C 602.03(a) specifies a fine of \$100.

3. The Inns & Motels has violated Env-Ws 325.05 by failing to submit a water sample for total coliform analysis in the system's scheduled sampling month of March 2003. This was the Inns & Motels of the Lakes Region's second bacteria monitoring violation in federal fiscal year 2003. For this violation, Env-C 602.03(a) specifies a fine of \$200.

4. The Inns & Motels has violated Env-Ws 325.05 by failing to submit a water sample for total coliform analysis in the system's scheduled sampling month of June 2003. This was the Inns & Motels of the Lakes Region's third bacteria monitoring violation in federal fiscal year 2003. For this violation, Env-C 602.03(a) specifies a fine of \$200.

5. The Inns & Motels has violated Env-Ws 325.05 by failing to submit a water sample for total coliform analysis in the system's scheduled sampling month of September 2003. This was the Inns & Motels of the Lakes Region's fourth bacteria monitoring violation in federal fiscal year 2003. For this violation, Env-C 602.03(a) specifies a fine of \$200.

6. The Inns & Motels has violated Env-Ws 351.01 by failing to submit to DES proof of public notice for the bacteria monitoring violation for June 2002 within the required 40 day period. For this violation, Env-C 602.04(b)(5) specifies a fine of \$1,000.

7. The Inns & Motels has violated Env-Ws 351.01 by failing to submit to DES proof of public notice of the bacteria monitoring violation for December 2002 within the required 40 day period. For this violation, Env-C 602.04(b)(5) specifies a fine of \$1,000.

8. The Inns & Motels has violated Env-Ws 351.01 by failing to submit to DES proof of public notice of the bacteria monitoring violation for March 2003 within the required 40 day period. For this violation, Env-C 602.04(b)(5) specifies a fine of \$1,000.

9. The Inns & Motels has violated Env-Ws 351.01 by failing to submit to DES proof of public notice of the bacteria monitoring violation for September 2003 within the required 40 day period. For this violation, Env-C 602.04(b)(5) specifies a fine of \$1,000.

10. The Inns & Motels has violated Env-Ws 326.30 and Env-Ws 321.09 by failing to submit a nitrate sample in the second quarter of 2002. Because the Inns & Motels submitted a nitrate make-up sample prior to DES issuing an NOV for the monitoring violation, the Division does not seek a fine for this violation.

11. The Inns & Motels has violated Env-Ws 326.30 and Env-Ws 321.09 by failing to submit a nitrate sample in the second quarter of 2003. This is the Inns & Motels of the Lakes Region's first chemical monitoring violation in federal fiscal year 2003. For this violation, Env-C 602.03(b) specifies a fine of \$100.

**The total fine being sought is \$4,900.**

## VI. HEARING, REQUIRED RESPONSE

The Inns & Motels of the Lakes Region, Inc., and Willard Drew have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, May 17, 2004, at 2:30 p.m. in Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Inns & Motels and Mr. Drew are required to respond to this notice.** Please respond **no later than April 17, 2004**, using the enclosed colored form as follows:

1. If the Inns & Motels and Mr. Drew plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If the Inns & Motels and Mr. Drew chooses to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If the Inns & Motels and Mr. Drew wishes to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate the Inns & Motels and Mr. Drew's interest in settling.

The Inns & Motels of the Lakes Region, Inc., and Willard Drew are not required to be represented by an attorney. If the Inns & Motels and Mr. Drew choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If the Inns & Motels and Mr. Drew wishes to have a hearing but are unable to attend as scheduled,** the Inns & Motels and Mr. Drew must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If the Inns & Motels and Mr. Drew does not notify the DES Legal Unit in advance and do not attend the hearing, the hearing will be conducted in the Inns & Motels and Mr. Drew's absence in accordance with Env C 204.09.

## VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Inns & Motels and Mr. Drew committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules.

Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the Inns & Motels and Mr. Drew committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that the Inns & Motels of the Lakes Region, Inc., and Willard Drew proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** the Inns & Motels and Mr. Drew did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the Inns & Motels and Mr. Drew did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, the Inns & Motels and Mr. Drew was making a good faith effort to comply with the requirement that was violated.
3. The Inns & Motels and Mr. Drew has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to the Inns & Motels and Mr. Drew's case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***


**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that the Inns & Motels and Mr. Drew committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Inns & Motels and Mr. Drew's opportunity to present testimony and evidence that the Inns & Motels and Mr. Drew did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If the Inns & Motels and Mr. Drew have any evidence, such as photographs, business records or other documents, that believes show that the Inns & Motels and Mr. Drew did not commit the violation(s) or that otherwise support the Inns & Motels and Mr. Drew's position, the Inns & Motels and Mr. Drew should bring the evidence to the hearing. The Inns & Motels and Mr. Drew may also bring witnesses (other people) to the hearing to testify on the Inns & Motels and Mr. Drews' behalf.

**If the Inns & Motels and Mr. Drew wish to have an informal meeting to discuss the issues, the Inns & Motels and Mr. Drew must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If the Inns & Motels and Mr. Drew have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

**COPY**  
  
Harry T. Stewart, P.E., Director  
Water Division

Enclosure (*NHDES Fact Sheet #CO-2002*)

cc: Mark Harbaugh, DES Legal Unit  
Michael J. Walls, Assistant Commissioner, DES  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Alan Leach, PWS, NHDES  
Public Information Officer, DES PIP Office  
Darlene Sherman, Sampling Agent  
David Andrade, Town of Gilford Health Office  
Town of Gilford Board of Selectman  
US EPA, Region 1

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**INNS & MOTELS OF THE LAKES REGION, INC., and WILLARD DREW  
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN April 17, 2004**

**APPEARANCE** On behalf of Inns & Motels of the Lakes Region, Inc., and Willard Drew.

\_\_\_\_\_ I will attend the hearing scheduled for Monday, May 17, at 2:30 p.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**WAIVER OF HEARING** On behalf of Inns & Motels of the Lakes Region, Inc., and Willard Drew.

\_\_\_\_\_ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$4,900 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Sciafani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**6 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**